

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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10 HENRY WILLIAMS, :
11 Plaintiff, :
12 vs. : CASE NO. C-1-02-533
13 MILTON CAN COMPANY, INC. and :
14 BWAY MANUFACTURING, :
15 Defendants. :
16 - - -

17 DEPOSITION

18 of ROBERT FRANCIA, taken before me, Kathy J. Nicholson,
19 Registered Professional Reporter and Notary Public in and
20 for the State of Ohio at large, as on cross-examination,
21 at the Hampton Inn, 858 Eastgate North Drive, in the City
22 of Batavia, County of Clermont, and State of Ohio, on
23 Thursday, the 1st day of April, 2004, beginning at 9:13
24 o'clock, a.m.

25 - - -

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EXHIBIT

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 WILLIAM ALLEN, ESQ.
4 CASPER & CASPER
5 One N. Main Street
P.O. Box 510
Middletown, OH 45042

6 On behalf of the Defendant:

7 DAVID BLACK, ESQ.
8 DINSMORE & SHOHL
1900 Chemed Center
255 East Fifth Street
9 Cincinnati, OH 45202

10 On behalf of the Deponent:

11 ERIC MINAMYER, ESQ.
12 324 Reading Road
Cincinnati, OH 45202

13 ALSO PRESENT: JOHN MCMAHAN, HENRY WILLIAMS

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25

1 Q. Okay. And how long were you in that position?

2 A. Two or three months.

3 Q. Did you bid off?

4 A. Yeah.

5 Q. To what?

6 A. Bid into the D&I operation.

7 Q. What's D&I?

8 A. That was a draw and iron operation that they had
9 made pop cans, just a single.

10 Q. And how long were you in D&I? That's an
11 ampersand.

12 A. I don't really know. Ten, fifteen years. I
13 don't really remember how long.

14 Q. Did your duties in D&I involve any fork truck
15 operation?

16 A. Yes.

17 Q. When did you first have to get certified, or did
18 you have to get certified to drive a fork truck at Heekin?

19 A. Well, I went back to D&I, I went back as a
20 utility operator. All utility operators had to be able to
21 operate all kinds of fork trucks and handle, you know,
22 huge coils and frames, skids, everything, you know, a
23 little bit of everything.

24 Q. Okay. Do you remember who trained you?

25 A. No, I don't remember who it was at that time.

1 Q. Anybody ever tell you that the company wasn't
2 able to find your driver qualification file?

3 A. No, I didn't know anybody ever even looked for
4 it.

5 Q. So in D&I, you drove a fork truck --

6 A. Uh-huh.

7 Q. -- for ten to fifteen years?

8 A. No.

9 Q. Okay.

10 A. No, I went back to D&I as a utility operator,
11 and then I went on to the mechanic's job.

12 Q. And did you have to drive a fork truck as a
13 mechanic?

14 A. No.

15 Q. Did you keep your, well, strike that.

16 When you took that first test where the guy says
17 he's sorry he's putting you on this bad fork truck, but go
18 move this stuff, and you did that satisfactorily, did he
19 give you a certificate or anything that said you're now a
20 licensed fork truck driver?

21 A. Yes.

22 Q. Did you ever have to take that test again before
23 the period where your license lapsed?

24 A. No.

25 Q. Okay. So how long were you a utility operator

1 really remember when I come out, back out into assembly.

2 I can't remember how long D&I has been gone.

3 Q. So from maintenance, you went to assembly?

4 A. Right.

5 Q. What did you do in assembly?

6 A. Went over there as a maintainer. As a mechanic
7 over there also.

8 Q. Same job description, just different area of the
9 plant?

10 A. Generally the same job description, just
11 maintain the machinery.

12 Q. No fork truck driving?

13 A. No fork truck driving.

14 Q. You didn't have your license at that time?

15 A. No.

16 Q. You told me that it had lapsed, correct?

17 A. Yes. Had no need for it.

18 Q. How long were you a maintainer in assembly?

19 A. Years. Up till maybe four years ago, five years
20 ago maybe.

21 Q. So '99, '2000?

22 A. I can't remember. Whenever my shoulder went
23 out, which I really can't remember when that was.

24 Q. Maybe I can help you out.

25 A. I think it was '98, but I can't remember.

1 Q. Jake's accident or injury happened in 2000. How
2 long approximately had you been driving, back on the
3 trucks?

4 A. I think since maybe '98.

5 Q. So about two years before?

6 A. I'm guessing two years.

7 Q. And you said your shoulder went out. That was a
8 Workers' Comp claim?

9 A. Yes.

10 Q. And as a result of restrictions I've learned
11 from that shoulder problem, you could no longer be a
12 maintainer. You had restrictions from your doctor that
13 said you can't be a maintainer?

14 A. That's what the company said. The doctor didn't
15 say that.

16 Q. Did you bid onto the trucks, or was that just
17 the only position that could meet your restrictions?

18 A. That was the only position with my seniority at
19 that time that I could do, that they'd let me do.

20 Q. Where were you in the seniority? I've talked to
21 a bunch of guys who have been there over thirty years.
22 Were you kind of low on the seniority?

23 A. At that time, I was awful close to the bottom,
24 very close to the bottom.

25 Q. And you'd still been there almost twenty years?

1 A. Almost thirty years. I've been there 27 years.

2 Q. That's amazing.

3 A. Yes, it is. If you look at the seniority list,
4 you'll see a big gap between like '77, '78, and '80 and
5 2000, there's a big gap there. A bunch of years they
6 didn't hire anybody. I don't know why that would be
7 relevant though.

8 Q. Well, it just amazed me.

9 A. It's amazing, yes, it is.

10 Q. So we've got you injuring your shoulder, and
11 were you off a period of time?

12 A. I was off for six months with my shoulder.

13 Q. Did you file a grievance to try to come back to
14 your maintainer job as opposed to getting on the trucks?

15 A. No.

16 Q. Did you tell the company you didn't want to
17 drive a truck?

18 A. No.

19 Q. Did you ever complain to your supervisors about
20 wanting to go back to the maintainer job as opposed to
21 driving the truck?

22 A. No.

23 Q. Were you assigned a specific department when you
24 went back on the trucks?

25 A. They put me permanently in salvage.

1 Q. What did you do in salvage?

2 A. Sorting the cans, scrapping cans, whatever it
3 took to, you know, to get rid of bad cans.

4 Q. Okay. My understanding in salvage, there may be
5 a pallet of cans or product, some of which may be good,
6 some of which may be bad, and you're sorting through that,
7 scrapping the bad, restacking the good, and putting it
8 back out into production or into storage?

9 A. Back in the warehouse, right.

10 Q. How often would you drive the truck in salvage?

11 A. Every day.

12 Q. How long was your shift; eight, ten hours?

13 A. Yeah. Yeah. Eight hours, sometimes more. A
14 lot of overtime back then.

15 Q. In the '98 to 2000 time frame, how much of your
16 eight to ten-hour shift was spent driving that truck as
17 opposed to sorting through product or scrapping stuff?

18 A. Oh. Probably about half of it. A couple of
19 hours anyway.

20 Q. All right.

21 A. At least two, sometimes a lot more.

22 Q. Now, you told me that because it had been so
23 long since you had driven the truck in D&I and the time
24 that you got assigned back to the truck in salvage, that
25 you had to get relicensed?

1 A. Uh-huh.

2 Q. And was that Corky Kobmann, was he the trainer
3 at that point?

4 A. Yes.

5 Q. We've talked to him. Tell me what you recall
6 about Corky's training course? Was there classroom work?

7 A. I really don't remember a whole lot about what
8 Corky did that was any different than what any of the rest
9 of them did.

10 Q. Do you remember how long it took between the
11 time you went to Cork and said hey, Cork, I'm here to get
12 licensed to go back on the trucks and the time that Corky
13 certified you? Was it a whole shift?

14 A. I don't remember. I don't remember.

15 Q. You don't remember whether it was more than a
16 day, less than a day?

17 A. No, I don't remember.

18 Q. Do you remember ever being trained by Corky more
19 than once?

20 A. No, I don't.

21 Q. So you think that you only went to Corky for the
22 certification one time when you got back on the truck in
23 '98?

24 A. Uh-huh.

25 Q. You don't recall ever being sent back to Corky

1 for retraining or recertification after you damaged some
2 cans or almost bumped somebody?

3 A. No, I don't.

4 Q. Do you recall during any of your training at
5 Bway, whether you were training to be on the fork trucks
6 or just general tool box, you know, OSHA topics that some
7 companies have, was there anything about pedestrian safety
8 and its interaction with industrial trucks or mobile
9 equipment?

10 A. No.

11 Q. Do you know who has the right of way between a
12 fork truck and a pedestrian?

13 A. According to Ralph Briggs, the pedestrian has
14 all right of way.

15 Q. What authority is Ralph Briggs to say that
16 that's who has the right of way?

17 A. I have no idea. He's just a foreman. That's
18 what he told all the people.

19 Q. Did he tell you that before Jake's injury?

20 A. I don't know. He's said it several times. We
21 used to have shift meetings. Everybody would be in there.
22 That's what he'd tell everybody.

23 Q. Did those shift meetings happen before Jake's
24 injury too?

25 A. Yes.

1 Q. And do you recall that Ralph said that at shift
2 meetings before Jake's injury?

3 A. I believe he did. I really don't remember.

4 Q. After Jake's injury, you never drove a fork
5 truck again, did you?

6 A. No.

7 Q. Do you recall any of the training either that
8 you initially got when you went into D&I or when Corky
9 trained you so that you could work in salvage that gave
10 you instructions on how to back safely?

11 A. No.

12 Q. Do you recall any of the training that gave you
13 the procedures for backing?

14 A. No, not really.

15 Q. Did --

16 A. I can't remember any specifics, no.

17 Q. When you were driving the fork truck, starting
18 in '98 and up until Jake's injury, what procedure would
19 you use before backing?

20 A. Before backing, you look back, you check your
21 mirrors, you look back.

22 Q. Where were the mirrors?

23 A. On the side of the fork truck. On the side of
24 the fork truck, just like on a vehicle, a car or any other
25 vehicle.

1 Q. Horizontal is this way.

2 A. They were vertical then.

3 Q. Vertical. Do you know what the company's
4 requirements were to qualify a driver?

5 A. Actually, no, I don't.

6 Q. Do you know what the company's safety rules were
7 or what the rules of the road were for fork truck drivers?

8 A. I guess the company rules were that, well, rules
9 were when it comes to backing, that you were to look back,
10 physically look back, not just to trust your mirrors, and
11 that's what I always did.

12 Q. How about if you were backing out of an
13 aisleway?

14 A. Anytime you're backing up from a hidden position
15 between cans or something like that, you should toot your
16 horn and back up. And when you're going through a doorway
17 or coming to a curve, you should toot your horn.

18 Q. Did you have to toot your horn if there wasn't
19 an obstruction and you were backing?

20 A. I don't know that you had to.

21 Q. Did you have to look over --

22 A. You had to look.

23 Q. -- a specific shoulder? Could you use either
24 shoulder or did you have to look both ways?

25 A. You should look both ways. Whether they've got

1 it spelled out that way or not, I'm not positive, but you
2 should look both ways.

3 Q. Do you know what could cause someone to be
4 suspended off the fork trucks as an operator?

5 A. Hitting somebody.

6 Q. Anything else?

7 A. I guess if you had a bunch of incidents, that
8 would do it.

9 Q. Do you know of anybody before you were taken off
10 the fork trucks in 2000 who had a refresher course with
11 Corky?

12 A. No, I don't know of anybody.

13 Q. Do you know of anybody who had been taken off
14 the fork trucks permanently or even temporarily before
15 2000?

16 A. No.

17 Q. Had you ever been taken off the fork trucks,
18 suspended either for a day, a week, a month, any period of
19 time of a suspension off the fork trucks?

20 A. No.

21 Q. Allen Artis said he had to drive your fork truck
22 for you one day because you had a one-day suspension. You
23 don't recall that?

24 A. I did not have any suspensions that I remember
25 prior to the accident with him. I gave them my license.